

***United States Court of Appeals
for the Second Circuit***



REPLY BRIEF

76-2174

To be argued by
PHYLIS SKLOOT BAMBERGER

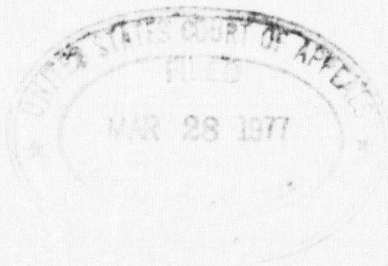
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
:
:
CALVIN L. TRUDO, :
:
:
Appellant, :
:
:
-against- :
:
:
UNITED STATES PAROLE BOARD, :
:
:
Appellee. :
:
:
-----X

Docket No. 76-2174

REPLY BRIEF FOR APPELLANT

ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
CALVIN L. TRUDO
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

PHYLIS SKLOOT BAMBERGER,
Of Counsel.

B
P/S

-----X
:
:
CALVIN L. TRUDO, :
:
Appellant, :
:
-against- : Docket No. 76-2174
:
UNITED STATES PAROLE BOARD, :
:
Appellee. :
:
-----X

ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

The Government asserts that neither the Parole Commission nor the predecessor Board has a presence in the District of Vermont and that therefore the district court had no jurisdiction to entertain appellant's petition. However, the Parole Commission, and earlier the Board, supervise all parolees through United States probation officers located in each dis-

strict. Title 18 U.S.C. §3655 requires each probation officer to perform such duties with respect to persons on parole as the Attorney General may request. Under former 28 C.F.R. §2.42 (1975), the Board, pursuant to a delegation of authority by the Attorney General, directed that "probation officers function as parole officers and provide supervision to parolees and mandatory releasees under the Board's jurisdiction."

The new Parole Commission and Reorganization Act adds to §3655 the specific provision that the Commission shall have the power to request that probation officers perform such duties with respect to any parolee as the Commission deems necessary for maintaining supervision and assistance to parolees. 18 U.S.C. §4203(b)(4). Pursuant to §§3655 and 4203(b)(4), the Commission has issued a regulation stating that probation officers function as parole officers and provide supervision to parolees under the Commission's jurisdiction. 28 C.F.R. §2.38 (1977).

Under this series of statutes and regulations, the probation officers of each district are the agents and representatives of the Parole Commission in the district in which they function. As such, they constitute a presence in the district which is properly a basis for district court jurisdiction.

In this case, appellant was on federal parole supervision in Vermont, the new conviction constituting the parole violation charges occurred in Vermont, and the application for the warrant was issued by Mr. Ficher, the Chief of Probation for

the District of Vermont. Further, the relief appellant seeks is not immediate release, but action by the Commission which will affect his future release. Therefore, the District Court of Vermont has the power to direct the appropriate relief. Because jurisdiction exists where the Parole Commission or its agents are located, and because there is therefore a basis for jurisdiction in Vermont, the district court properly denied the motion to dismiss.

The only remaining issue for the district judge's consideration was whether the venue in Vermont was proper. Appellant's physical custody in Pennsylvania may have made it more convenient to have the lawsuit conducted in that state. However, the Government never moved for a change of venue, and the court never ordered the transfer pursuant to 28 U.S.C. §1404. Accordingly, the district judge correctly assumed jurisdiction to decide this case.

II

The Government claims, at 9 of the respondent's brief, that appellant was not prejudiced because his alleged witness died before the Board was required to give him notice of the detainer. Appellant alleged that Rock died in the spring of 1975. Since the warrant was issued on February 10, 1975, timely notice would certainly have put appellant on notice so that he could have preserved his evidence.

Further, the decision in Shelton v. Taylor, Doc. No. 76-2099, slip op. 1893 (2d Cir., February 22, 1977), is not controlling here. Unlike appellant, Shelton did not lose his evidence, but was merely delayed in the presentation of it. Here, appellant is permanently deprived of his opportunity to present his case.

CONCLUSION

For the foregoing reasons and for the reasons set forth in appellant's main brief, the order below should be reversed and appellant released from custody to parole supervision; in the alternative, he should be given credit for the time spent in custody on the intervening sentence.

Respectfully submitted,

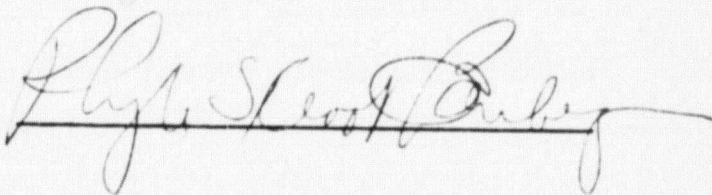
WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
CALVIN L. TRUDO
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

PHYLIS SKLOOT BAMBERGER,
Of Counsel.

CERTIFICATE OF SERVICE

March 28, 1977

I certify that a copy of this reply brief has
been mailed to the United States Attorney for the
District of Vermont.

A handwritten signature in cursive script, appearing to read "Philip H. Root", is written over a horizontal line.